

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

CRAIG DRIESSE, *et al.*,

Plaintiffs

VS.

EXXONMOBIL OIL CORPORATION, *et al.*,

Defendants.

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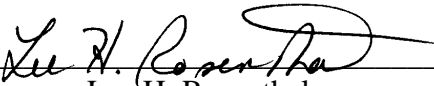
CIVIL ACTION NO. H-12-3041

ORDER

Plaintiffs Craig Diresse and Jacob Delgado filed a personal-injury suit against several defendants, including Secorp Industries, LLC (Secorp). The plaintiffs claimed that Secorp failed to provide proper medical care for injuries sustained while they were working offshore. On April 3, 2013, Secorp moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Secorp argued that the plaintiffs failed to provide presuit notice of their health care liability claims as required by Chapter 74 of the Texas Civil Practice and Remedies Code. (Docket Entry No. 27, at 1). The plaintiffs responded on April 5, 2013 that dismissal was not warranted because they had subsequently complied with Chapter 74's notice requirement. The plaintiffs argued that the proper course was to abate this action for 60 days after Secorp receives the plaintiffs' notice of their health care liability claims. (Docket Entry No. 29, at 1 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 74.051 (West 2011)). Section 74.051(a) of the Texas Civil Practice and Remedies Code provides that "[a]ny person . . . asserting a health care liability claim shall give written notice of such claim . . . to each physician or health care provider against whom such claim is being made at least 60 days before the filing of a suit . . . based upon a health care liability claim." This statute does not

provide for dismissal for failure to provide the required notice. “[F]ailure to provide notice under section 74.051 only results in the abatement of the action against medical providers for sixty days rather than dismissal.” *Negron v. PLIVA, Inc.*, No. 3:12-cv-00369-N, slip op. at 9 n.8 (N.D. Tex. Aug. 24, 2012) (citing *De Checa v. Diagnostic Ctr. Hosp., Inc.*, 852 S.W.2d 935, 938 (Tex. 1993); *Schepps v. Presbyterian Hosp. of Dall.*, 652 S.W.2d 934, 938 (Tex. 1983)). The motion to dismiss is denied. This case is abated for 60 days from the date of Secorp’s receipt of the health care liability claim.

SIGNED on June 5, 2013, at Houston, Texas.



Lee H. Rosenthal
United States District Judge